

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GREGORY COLE,

Plaintiff,

-against-

JOHN ROGERS, ET AL.,

Defendants.
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ORDER

14-CV-3216 (JFB)(AKT)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 27 2017 ★
LONG ISLAND OFFICE

JOSEPH F. BIANCO, District Judge:

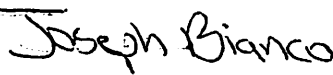
Pro se plaintiff Gregory Cole (“plaintiff”) filed this 42 U.S.C. § 1983 action against Nassau County Police Officers John L. Rogers and Matthew Flannery (collectively, “defendants”). Defendants filed a motion for summary judgment, and plaintiff cross-moved for summary judgment. (ECF Nos. 59, 61.) Before the Court is a Report and Recommendation (“R&R,” ECF No. 64) from Magistrate Judge Tomlinson recommending that the Court deny both motions. The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (*See* R&R, dated March 6, 2017, at 32.) Defendants served the R&R on plaintiff on March 7, 2017 (*see* ECF No. 65), and the date for filing any objections has accordingly since expired. None of the parties has not filed any objections to the R&R. Therefore, for the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety and denies both parties’ motions to for summary judgment.

Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de*

novo or any other standard, when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we may excuse the default in the interests of justice.”).

Although the parties have waived any objections to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly, IT IS HEREBY ORDERED that defendants’ motion for summary judgment is denied, and plaintiff’s cross-motion for summary judgment is denied. Furthermore, to the extent the Complaint can be construed to assert state law claims for assault and battery, those claims are dismissed for the reasons set forth in the R&R.

SO ORDERED.



JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: March 27, 2017
Central Islip, NY